S.B. Civil Second Appeal No.173/2004
Madan Gopal
vs
LRs of Navratan Mal Nagauri

DATE OF ORDER : - 1.11.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr.Suresh Shrimali, for the appellant.
Mr.Ravi Bhansali, for the respondent-caveator.

<><><>

Heard learned counsel for the parties.

The two courts below concurrently decided against the appellant-tenant and held that the plaintiff Navratan Mal (now deceased) and his son Dilip are in need of the suit premises. Learned counsel for the appellant submits that the finding of the trial court as well as appellate court is absolutely illegal and perverse. According to learned counsel for the appellant, the witness Dilip for whose need the suit was filed, admitted in his statement that he was having a business and he obtained even the Sales Tax number. The plaintiff in his plaint pleaded that since his son Dilip was unemployed after his education, therefore, the entire case of the plaintiff was false. It is also submitted that if Dilip had any necessity of any of premises then he already had premises in which he was running his business.

I considered the submissions of learned counsel for the appellant and perused even the statement of the witnesses. It is clear from the facts mentioned in the judgments of the two courts below that the alleged plot of the business of Dilip is situated about 70 feet away from the main road.

In view of the above facts both the courts below have considered the entire evidence available on record and held that the suit premises is required for the necessity

of the plaintiff Navratan Mal (now deceased) and his son Dilip. I do not find that the courts below have committed error of fact and no substantial questions of law are involved in this appeal, hence, the appeal of the appellant deserves to be dismissed.

Learned counsel for the appellant prays that reasonable time may be granted to the appellant because appellant will have to shift his business. Looking to the facts and circumstances of this case, this Court deems it proper that decree for eviction against the appellant may not be executed till 31st Dec., 2005 on the condition that the appellant shall furnish a written undertaking before the trial court undertaking that appellant shall deliver the vacant possession of the premises in question to the respondent-landlord on or before 1.1.2006 and further the appellant shall not part with possession of the property nor sub-let it to any one. The appellant shall further pay the arrears of rent, if due, and shall further pay the rent to the landlord or shall deposit the rent in the trial court within a period of one month from today. In case, undertaking is not furnish within a period of one month from today and in case of default of payment of rent, the decree shall become executable forthwith.

In view of the above, the appeal of the appellant is dismissed with above concession.

(Prakash Tatia), J.

c.p.goyal/-